

EXHIBIT 3

[REDACTED]

CONFIDENTIAL

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MARYLAND

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IN RE UNDER ARMOUR SECURITIES) Civil No.

LITIGATION) RDB-17-388

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Videotaped Deposition of KEVIN A. PLANK,
held at 100 International Drive, Baltimore,
Maryland, commencing at 10:03 a.m.,
Wednesday, February 15, 2023, before
Tina M. Alfaro, a Notary Public within
and for the State of Maryland.

JOB No. 5630283

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1 percent profit when you sold that hundred million 16:11:19
2 in stock, right? 16:11:21
3 A. Virtually. 16:11:22
4 MR. HENSSLER: Let's go off the record. 16:11:27
5 THE VIDEOGRAPHER: Off the record, 16:11:29
6 16:11. 16:11:30
7 (A break was had.) 16:23:39
8 THE VIDEOGRAPHER: We're back on the 16:29:49
9 record 16:29. 16:29:50
10 BY MR. HENSSLER: 16:29:53
11 Q. Welcome back, sir. You understand you're 16:29:53
12 still under oath? 16:29:56
13 A. Yes. 16:29:58
14 Q. Okay. Let's talk about what's referred to 16:29:59
15 as a quiet period. 16:30:00
16 A. Do we need this on? Okay. 16:30:02
17 Q. Let's talk about what's referred to as a 16:30:04
18 quiet period. You're familiar with that phrase 16:30:06
19 from your time as the CEO of Under Armour, right? 16:30:08
20 A. Yes. 16:30:11
21 Q. And the quiet period refers to the time 16:30:11
22 between the end of a financial quarter and the 16:30:14

1 company announcing financial results, right? 16:30:17

2 A. Yes. 16:30:22

3 Q. And is it your understanding that during 16:30:22

4 the quiet period a public company like Under Armour 16:30:25

5 must avoid selective disclosure of material 16:30:27

6 information? 16:30:30

7 MR. REISNER: Objection to form, calls for 16:30:31

8 a legal conclusion. You may answer. 16:30:33

9 A. Ask that again. 16:30:35

10 Q. Happy to. 16:30:37

11 Is it your understanding that during a 16:30:39

12 quiet period a public company like Under Armour 16:30:40

13 must avoid selective disclosure of material 16:30:43

14 information? 16:30:46

15 MR. REISNER: Same objection. 16:30:48

16 A. Yeah. Yes. 16:30:49

17 Q. And the quiet period is something that you 16:30:57

18 were well aware of during the 2015 to 2017 time 16:30:59

19 period as a CEO, right? 16:31:04

20 A. It's been consistent since we went public 16:31:05

21 in November of 2005, yes. 16:31:08

22 Q. And you understood that as a public 16:31:10

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1 was actually reacting to I can't believe he 16:43:13
2 recorded me. So it happened, forgotten about it, 16:43:15
3 never thought about it, and certainly have never 16:43:22
4 done -- it's not something that I do. 16:43:25

5 Q. You recorded that conversation, right? 16:43:30

6 A. I believe so, yes. 16:43:32

7 Q. Did you use your iPhone? 16:43:33

8 A. It might have happened where it happened 16:43:35
9 to be recording and I think it might have been a 16:43:37
10 surprise because, again, I have no interest in 16:43:39
11 proactively recording anyone. 16:43:42

12 Q. You sent it to someone, right? 16:43:45

13 A. I did. 16:43:47

14 Q. Did you accidentally send it to somebody? 16:43:50

15 A. No. I proactively sent it to them once I 16:43:53
16 realized that I had the recording and it was sort 16:43:56
17 of an exasperated this is my long night. 16:43:59

18 Q. You didn't tell Mr. Mirchin you were 16:44:03
19 recording him at the time you were recording that 16:44:05
20 conversation, right? 16:44:07

21 A. I don't believe I was aware that I was 16:44:08
22 recording that conversation. 16:44:09

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1 Q. You didn't get his permission to record 16:44:10
2 him, right? 16:44:12
3 A. No, I did not. 16:44:13
4 MR. REISNER: Objection, asked and 16:44:14
5 answered. 16:44:14
6 Q. You understand that's the law in Maryland, 16:44:14
7 you have to get someone's permission to record a 16:44:16
8 conversation like that? 16:44:18
9 A. Yeah, but as I said, I don't believe I 16:44:20
10 proactively recorded that conversation with an 16:44:22
11 intent. 16:44:25
12 Q. Why did you secretly record that 16:44:28
13 conversation with Mr. Mirchin? 16:44:30
14 MR. REISNER: Objection, misstates the 16:44:32
15 evidence. 16:44:33
16 A. I feel like I've said this a few times. 16:44:33
17 We could be in disagreement if you'd like, but I 16:44:36
18 didn't secretly record that conversation with 16:44:38
19 Mr. Mirchin. I might have had my phone on, I might 16:44:41
20 have put it down because we were sitting on my back 16:44:44
21 deck and we were, as I said, drinking whiskey. I 16:44:46
22 might have rested my glass on it, I might have put 16:44:49

1 an ashtray on it because you can hear there's a 16:44:51
2 click with a lighter going off as well. I don't 16:44:53
3 know what happened or how it got recorded. As I 16:44:56
4 said, I don't have a practice of doing that. You 16:44:58
5 all have thousands of hours of every inch of audio 16:45:00
6 that we've ever had as a company and there's not a 16:45:02
7 stitch of that happening anywhere else. So I was 16:45:05
8 as surprised as you were as I stated earlier. So 16:45:08
9 no, secretly recording was not an intention of 16:45:13
10 mine. 16:45:14

11 Q. It was your intention to send that 16:45:15
12 recording to someone else outside the company, 16:45:17
13 though, right? 16:45:19

14 MR. REISNER: Objection, asked and 16:45:20
15 answered. 16:45:20

16 A. Yeah. I was characterizing it's 8:45 or 16:45:20
17 8:30 at night, I've had a long night, I'm trying to 16:45:24
18 go home, and Matt's holding me here hostage talking 16:45:27
19 about the business. 16:45:30

20 Q. The audio that we just listened to where 16:45:36
21 you said that the Under Armour CFO, Mr. Molloy, 16:45:38
22 told you that Under Armour should take the quarter 16:45:41

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1 down by \$10 million, you'd agree that that was 16:45:44
2 nonpublic information, right? 16:45:47

3 MR. WAREHAM: Object to the form, 16:45:49
4 foundation, calls for a legal conclusion. 16:45:51

5 A. Can you please ask that question again. 16:45:53

6 Q. Sure. 16:45:56

7 Nobody outside of the company knew that 16:45:56
8 the CFO came to you and said we've got to take the 16:45:59
9 quarter down 10 million, right? 16:46:02

10 MR. REISNER: Objection to form. You may 16:46:06
11 answer. 16:46:07

12 A. I don't -- I wouldn't believe so, but I 16:46:08
13 think that a number like \$10 million would be 16:46:09
14 immaterial regardless. 16:46:12

15 Q. Well, I asked whether it was nonpublic 16:46:13
16 information. 16:46:14

17 A. I wouldn't -- I wouldn't have an opinion, 16:46:17
18 I don't think so, but I think \$10 million is sort 16:46:20
19 of variable one way or the other. 16:46:22

20 Q. What do you mean by "immaterial"? 16:46:24

21 A. \$10 million to a billion three or a 16:46:28
22 billion four quarter is what I would refer to as 16:46:31

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1 not a material amount of money. 16:46:33

2 Q. You do agree, though, that that 16:46:36

3 information that Molloy came to you, as you said on 16:46:39

4 the recording, and said we've got to drop the 16:46:42

5 quarter by 10 million, that was nonpublic 16:46:45

6 information at the time, right? 16:46:47

7 MR. REISNER: Objection to form, asked and 16:46:49

8 answered, three times already. 16:46:49

9 MR. HENSSLER: You can answer. 16:46:51

10 A. Yeah, it would feel like the kind of 16:46:52

11 information I'd be comfortable sharing with the 16:46:53

12 confidants that I had in my circle with an 16:46:55

13 understanding it would be kept in trust. 16:46:57

14 Q. There's never been any disclosure to this 16:46:59

15 day, right, that the CFO of the company came to you 16:47:01

16 in the first quarter of 2016 and said we need to 16:47:04

17 drop the quarter by 10 million, right? 16:47:08

18 MR. WAREHAM: Objection to form, 16:47:10

19 foundation, grossly mischaracterizes what 16:47:11

20 Mr. Molloy says on the record actually happened. 16:47:13

21 MR. HENSSLER: We're talking about the 16:47:15

22 audio we just listened to. 16:47:16

1 MR. WAREHAM: I'm talking about the record 16:47:22
2 and I'm objecting to the form of your question. 16:47:22
3 MR. HENSSLER: Do you want to play it 16:47:22
4 again? 16:47:22
5 MR. WAREHAM: Do you want to fight with me 16:47:22
6 or do you want to ask questions? 16:47:23
7 MR. HENSSLER: Well, you're misstating the 16:47:25
8 record. 16:47:26
9 MR. WAREHAM: If you want to fix the 16:47:26
10 infirmed question, fix the infirmed question. If 16:47:27
11 you want to pick door number three and fight with 16:47:30
12 me, go ahead and do that. It's late in the day. 16:47:30
13 I'm happy to have it happen. 16:47:33
14 MR. HENSSLER: I definitely don't want to 16:47:35
15 fight with anyone. 16:47:36
16 BY MR. HENSSLER: 16:47:45
17 Q. You'd agree, sir, that there's never to 16:47:45
18 this day been any public disclosure of what you 16:47:48
19 said on that audio that we just listened to, which 16:47:51
20 is Exhibit 28 to today's deposition, where you said 16:47:53
21 Molloy, the motherfucker, came to you and said 16:47:58
22 we've got to drop the quarter 10 million, right? 16:48:00

1 MR. WAREHAM: Form and foundation 16:48:03
2 objections. 16:48:03
3 MR. REISNER: Objection to form and asked 16:48:03
4 and answered four times now. 16:48:04
5 MR. HENSSLER: You can answer. 16:48:07
6 A. Yeah. I wouldn't know why that would need 16:48:08
7 to be disclosed to anyone, to be honest with you. 16:48:10
8 So no, I'm not aware of any public disclosure 16:48:12
9 that's occurred about that \$10 million on the 16:48:15
10 1.3-billion-dollar quarter. 16:48:19
11 Q. And you sent that audio that we just 16:48:27
12 listened to to Stephanie Ruhle, right? 16:48:30
13 A. I did. And to Jen Smith. 16:48:34
14 Q. And to Jen Smith also? 16:48:35
15 A. Yes. 16:48:38
16 Q. Anyone else? 16:48:38
17 A. I don't believe. So. 16:48:39
18 Q. So you shared nonpublic information about 16:48:41
19 Under Armour's business with Stephanie Ruhle at 16:48:45
20 that time, right? 16:48:47
21 MR. REISNER: Objection to form. 16:48:48
22 MR. WAREHAM: Form objection, 16:48:50

1 foundation. 16:48:50

2 A. Well, she's a confidant. 16:48:50

3 Q. What does that mean, confidant? 16:48:52

4 A. She's someone I can get counsel from. 16:48:53

5 Q. Did you have a nondisclosure agreement 16:48:55

6 that you'd executed with Ms. Ruhle? 16:48:58

7 A. No. 16:49:01

8 Q. Handshake deal? 16:49:01

9 A. Yeah. It was an understanding of trust. 16:49:04

10 Q. And was that something you guys had a 16:49:06

11 conversation about? 16:49:07

12 A. No, not in detail I don't believe. 16:49:10

13 Q. So it was just your assumption that you 16:49:12

14 could provide her with nonpublic information about 16:49:13

15 Under Armour's business and she wouldn't mention it 16:49:17

16 to anyone else? 16:49:19

17 MR. REISNER: Objection to form. You may 16:49:20

18 answer. 16:49:21

19 A. Yeah. It was understanding the context is 16:49:21

20 that I would give her counsel on her career and she 16:49:24

21 would give me counsel on things I was dealing with 16:49:26

22 that were either banking or media or human nature 16:49:28

1 in relation. 16:49:33

2 Q. Did Ms. Ruhle give you counsel on what we 16:49:38

3 just listened to where you shared with her the fact 16:49:42

4 that Molloy came to you and said we've got to drop 16:49:45

5 the quarter by 10 million? 16:49:48

6 MR. REISNER: Objection to form. 16:49:49

7 A. Yeah. I don't believe so, but I don't 16:49:51

8 recall a conversation following it. As I said, I 16:49:52

9 don't recall making the recording, I don't recall 16:49:57

10 sending the recording out, and I certainly don't 16:49:58

11 recall discussing the recording. 16:50:01

12 (Plank Exhibit 29 was marked 16:50:07

13 for identification.) 16:50:07

14 BY MR. HENSSLER: 16:50:07

15 Q. Let's mark the next exhibit, it's 29. 16:50:07

16 A. I'm going to start meeting you halfway, 16:50:32

17 Tina. It's late in the day. 16:50:34

18 THE REPORTER: Thank you. 16:50:37

19 THE WITNESS: You got it. 16:50:38

20 Q. This is Exhibit 29 to today's deposition. 16:50:39

21 It's also been marked Government Exhibit 213. For 16:50:41

22 the record, Exhibit 29 is Bates UA-IE-10344888. 16:50:44

1 This is you sending that audio file we just 16:50:53
2 listened to to Stephanie Ruhle, right? 16:50:55
3 A. Yes. 16:51:00
4 Q. And the e-mail address you sent it to is 16:51:00
5 [REDACTED], right? 16:51:03
6 A. Yes. 16:51:08
7 Q. What is that domain, ravenfoundry.com? 16:51:08
8 A. It was an e-mail address. 16:51:13
9 Q. Did you create that e-mail address? 16:51:14
10 A. I didn't personally, but yes, it was part 16:51:16
11 of my -- a group that I had. I had several phones 16:51:19
12 from there. 16:51:25
13 Q. So you created a separate e-mail address 16:51:26
14 for yourself for a specific phone? 16:51:29
15 A. Yes. I had -- I had two or three of those 16:51:31
16 phones for a number of different reasons, and I 16:51:35
17 gave them to friends of mine to communicate with. 16:51:37
18 Q. So you gave the phone -- I'm sorry. 16:51:40
19 A. I said I gave them to friends of mine to 16:51:44
20 communicate with. 16:51:46
21 Q. So you gave Stephanie Ruhle a phone with 16:51:46
22 this e-mail address? 16:51:48

1	A. I did.	16:51:49
2	Q. Who created that e-mail address for you?	16:51:51
3	You said it wasn't you.	16:51:54
4	A. Well, whoever the company was.	16:51:55
5	Q. Did one of your assistants handle that for	16:51:57
6	you or you did that yourself?	16:51:59
7	A. I don't recall.	16:52:02
8	Q. Is that something you typically do	16:52:04
9	yourself or did you have Jen Smith do that?	16:52:05
10	A. I probably would have someone from my	16:52:07
11	family office, and Jen Smith worked at Under	16:52:09
12	Armour, not at the family office at that time.	16:52:11
13	Q. And who was Ms. Ruhle at this time?	16:52:23
14	A. I'm sorry?	16:52:27
15	Q. Who was Ms. Ruhle? What was the	16:52:28
16	relationship?	16:52:30
17	A. She's a great friend of mine.	16:52:31
18	Q. And she did not work for Under Armour,	16:52:33
19	though, right?	16:52:35
20	A. No.	16:52:36
21	Q. She never has worked for Under Armour?	16:52:37
22	A. No. Never compensated, never part of it,	16:52:39

1 no. 16:52:42

2 Q. And so she's a great friend and I think 16:52:43

3 you said a confidant; is that right? 16:52:46

4 A. Yeah. 16:52:47

5 Q. Did she ever fly on the Under Armour jet? 16:52:49

6 A. Yes, along with 150-plus others. 16:52:52

7 Q. How many times? 16:52:57

8 A. Outside -- people outside of Under 16:52:58

9 Armour. 16:52:59

10 Q. How many times did Ms. Ruhle fly on the 16:53:00

11 Under Armour jet? 16:53:01

12 A. I don't remember. Less than a handful. 16:53:02

13 Q. Why did she get to fly on the Under Armour 16:53:04

14 jet? 16:53:06

15 A. Well, because we were probably going to 16:53:06

16 the same place in the same city and leaving from 16:53:09

17 the same destination. 16:53:11

18 Q. Did you clear that with the Under Armour 16:53:12

19 board of directors having Ms. Ruhle fly on the 16:53:14

20 Under Armour jet? 16:53:15

21 A. Well, it's actually my jet. So I lease it 16:53:16

22 to Under Armour for Under Armour business and the 16:53:19

1 company reimburses me for Under Armour-specific 16:53:20
2 travel. For anything that's outside of that or 16:53:21
3 anybody outside of Under Armour, I would cover that 16:53:25
4 personally or not have that reimbursed. 16:53:28

5 Q. Under Armour pays you a monthly lease 16:53:33
6 payment for that jet; is that right? 16:53:34

7 A. Yes. Well, it depends on the year, but it 16:53:37
8 didn't start until about four or five years into my 16:53:42
9 owning a jet, yes. 16:53:45

10 Q. In this time frame, around 2016, the 16:53:47
11 company leased the jet from you, though, right? 16:53:51

12 A. Portions of the jet, yes. 16:53:54

13 Q. Was it like a regular monthly payment that 16:53:55
14 was made to you from the company for the jet? 16:53:58

15 A. That was one of the aspects as to how we'd 16:54:00
16 get reimbursed, yes. 16:54:03

17 Q. So about 166,000 a month? 16:54:05

18 A. That sounds directionally correct. 16:54:09

19 Q. It was a black Gulfstream; is that 16:54:10
20 correct? 16:54:12

21 A. It is. 16:54:12

22 Q. Did you clear sharing that inside 16:54:14

1 information about Under Armour with Ms. Ruhle with 16:54:16
2 the Under Armour board of directors? 16:54:18
3 MR. REISNER: Objection to form, lacks 16:54:20
4 foundation. 16:54:22
5 A. Yeah. I'm not drawing the same conclusion 16:54:24
6 you are. 16:54:26
7 Q. The information that was on the recording 16:54:26
8 of you and Mr. Mirchin talking about Mr. Molloy 16:54:28
9 being a motherfucker for telling you that the 16:54:31
10 company needed to drop the quarter 10 million, did 16:54:33
11 you clear with the board of directors that you were 16:54:36
12 sharing that with somebody outside the company, 16:54:39
13 Stephanie Ruhle? 16:54:41
14 MR. REISNER: Same objection. You may 16:54:42
15 answer. 16:54:43
16 A. I more than likely would have had a 16:54:43
17 conversation with my board of directors to describe 16:54:45
18 the same frustration that I described to Ms. Ruhle 16:54:47
19 regarding Mr. Molloy about asking to take a 16:54:50
20 1.3-billion-dollar quarter down \$10 million in 16:54:53
21 outlook. It was probably a similar frustration. 16:54:58
22 Did I get clearance? I don't believe that that 16:55:00

1 would be -- I don't believe I would think that was 16:55:02
2 something to get clearance on or for for someone 16:55:05
3 that I had in confidence. 16:55:08

4 Q. So you didn't think you needed the board's 16:55:11
5 clearance to share that inside company information 16:55:13
6 with Ms. Ruhle? 16:55:15

7 MR. REISNER: Objection to form, assumes 16:55:16
8 facts not in evidence. You may answer. 16:55:18

9 A. To call my board to ask them if I can 16:55:19
10 speak to Ms. Ruhle in confidence? No, I don't feel 16:55:21
11 I need to do that. 16:55:24

12 Q. Did you share with anyone at the company 16:55:25
13 the fact that you were sharing inside information 16:55:28
14 about Under Armour with Stephanie Ruhle? 16:55:30

15 MR. REISNER: Objection to form, assumes 16:55:33
16 facts not in evidence. You may answer. 16:55:34

17 A. I have a number of different outside 16:55:35
18 advisors who I seek counsel from. I'm very 16:55:38
19 fortunate to have a great black book or Rolodex or 16:55:41
20 a list of names that I can go to to ask counsel for 16:55:43
21 depending on the situation, and when appropriate I 16:55:45
22 would ask different people for their areas of 16:55:47

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1 and put in one place so it wouldn't be violating a 17:12:52
2 quiet period and make sure the people have the 17:12:55
3 facts of just something that we can say. 17:12:57

4 Q. You wanted this sent to everyone, right, 17:12:59
5 that's why you put it in all caps? 17:13:02

6 MR. REISNER: Objection to form. 17:13:04

7 A. I don't recall. 17:13:04

8 Q. When you put something in all caps like 17:13:05
9 that with an exclamation point, you're adding 17:13:07
10 emphasis, right? 17:13:09

11 A. Perhaps. 17:13:11

12 Q. And Darren, Camile, Robbie, and Omar, are 17:13:14
13 those financial analysts that covered Under Armour 17:13:19
14 at the time? 17:13:21

15 A. Camilo. No. Darren is Darren Rovell, 17:13:23
16 Omar was independent, Robbie may have been between 17:13:31
17 banks. I don't know. Maybe he was still at Bank 17:13:34
18 of America, but he was an analyst at one time for 17:13:37
19 sure. 17:13:39

20 Q. Cramer refers to Jim Cramer from CNBC? 17:13:40

21 A. Yeah. 17:13:43

22 Q. And then did you personally send these 17:13:46

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1 all over. Let's get you a list to have them 17:19:19
2 balance that bullshit story poisoning the public 17:19:22
3 markets!" Right? 17:19:26
4 MR. WAREHAM: Objection to form. 17:19:29
5 A. Yeah. Looks like I probably meant to say 17:19:30
6 "these analysts are all over it." 17:19:32
7 Q. As in the analysts are covering the Morgan 17:19:37
8 Stanley report? 17:19:42
9 A. Yeah. Other people read the report as 17:19:42
10 well and they're reacting to it. 17:19:44
11 Q. And you're telling Ms. Ruhle that in your 17:19:46
12 opinion the Morgan Stanley report is poisoning the 17:19:48
13 public markets? 17:19:50
14 A. I can't be sure what I'm talking about 17:19:54
15 there. 17:19:55
16 Q. The bullshit story that you're referring 17:19:56
17 to, is that the Morgan Stanley report? 17:19:58
18 A. Probably. 17:20:00
19 Q. And you sent Ms. Ruhle this analyst report 17:20:03
20 so that she could help you refute the Morgan 17:20:08
21 Stanley report, right? 17:20:10
22 MR. REISNER: Objection, form, asked and 17:20:11

1 Q. Well, your phrase "new math," right? 17:26:03

2 A. Sure. I mean, we shared the best ideas. 17:26:05

3 Q. And you sent it to that ravenfoundry.com 17:26:14

4 e-mail that -- which is the phone that you provided 17:26:18

5 for Ms. Ruhle? 17:26:20

6 A. Yeah. 17:26:21

7 Q. And you wrote to Ms. Ruhle "This is how I 17:26:22

8 feel about our opportunity and I plan to drag my 17:26:24

9 team if I have to forward, and, for the record, 17:26:26

10 having you in my life has helped me write this," 17:26:29

11 correct? 17:26:32

12 A. Yeah. 17:26:33

13 Q. The "my team" that you're going to drag 17:26:37

14 forward, that refers to your executive team, 17:26:40

15 right? 17:26:41

16 A. I think just the Under Armour team in 17:26:42

17 general. 17:26:43

18 Q. And how did having Ms. Ruhle in your life 17:26:44

19 help you write this e-mail to your executive team? 17:26:47

20 A. I don't recall, but I think she's a 17:26:51

21 positive force that thinks about moving forward. 17:26:57

22 Q. And this e-mail was sent to Ms. Ruhle 17:26:59

1 during a quiet period, correct? 17:27:01

2 A. Yeah. It was sent to that confidential 17:27:05

3 e-mail. 17:27:08

4 Q. Two days before the investor call, right? 17:27:08

5 A. Well, as I said, I had her as someone in 17:27:11

6 confidence. 17:27:13

7 Q. There was no agreement that anything was 17:27:14

8 confidential, right? 17:27:15

9 MR. REISNER: Objection to form, 17:27:16

10 misstates -- 17:27:18

11 A. There was an agreement. There was 17:27:18

12 certainly an understanding that it was not to be 17:27:20

13 shared with anyone of anything we discuss, and the 17:27:21

14 same thing regarding her career. 17:27:25

15 Q. So what was the agreement? 17:27:28

16 A. There's an understanding of 17:27:31

17 confidentiality, to be able to discuss things that 17:27:33

18 wouldn't be shared. 17:27:37

19 You know what? I'm either going to fill 17:27:43

20 that bottle or I need to use the restroom as 17:27:45

21 well. 17:27:48

22 MR. REISNER: Can we go off the record and 17:27:48

1 take a break. Thank you. 17:27:49

2 THE VIDEOGRAPHER: Going off the record at 17:27:51

3 17:27. 17:27:53

4 (A break was had.) 17:39:25

5 THE VIDEOGRAPHER: We're back on the 17:39:31

6 record at 17:39. 17:39:32

7 BY MR. HENSSLER: 17:39:48

8 Q. Welcome back. You understand you're still 17:39:48

9 under oath? 17:39:49

10 A. Yes. 17:39:50

11 Q. And when we took a break you were talking 17:39:50

12 about what you described as the agreement that you 17:39:53

13 had with Stephanie Ruhle. Could you please 17:39:56

14 describe this confidentiality agreement that you 17:40:01

15 had with Ms. Ruhle. 17:40:02

16 A. It's just an understanding that I had with 17:40:04

17 a few expert advisors from different fields that 17:40:06

18 give me counsel, mentors, friends from time to 17:40:09

19 time, 17:40:12

20 Q. I'm specifically asking about the 17:40:15

21 agreement with Ms. Ruhle. Nothing in writing, 17:40:17

22 though, right? 17:40:20

1 A. No, but it's a sophisticated banker who 17:40:21
2 understands finance, Wall Street, and as well with 17:40:24
3 media. So there's definitely a depth of 17:40:30
4 understanding that she would know the consequences 17:40:32
5 of breaching any of that confidentiality. 17:40:34

6 Q. What would be the consequences? 17:40:37

7 A. I think it would be very dangerous things 17:40:40
8 to do. 17:40:42

9 Q. What do you mean? 17:40:43

10 A. Inside trading, things like that, trading 17:40:44
11 any of that information, but she wouldn't own the 17:40:47
12 stock, trade in the stock, advise on the stock. 17:40:50

13 Q. We were looking at Exhibit 36. Do you 17:40:58
14 still have that in front of you? It's the 17:41:01
15 July 24th, 2016 e-mail that you sent to Ms. Ruhle. 17:41:06

16 A. Yes. Got it. 17:41:11

17 Q. You didn't clear with anybody that you 17:41:11
18 were sharing this information about Under Armour 17:41:14
19 with Ms. Ruhle, correct? 17:41:17

20 A. No. And -- no. 17:41:18

21 Q. Okay. We can put that one aside. 17:41:20

22 Let's talk about the 3Q '16 investor call, 17:41:24

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1 Q. You'd agree that the fact that Under 17:43:50
2 Armour was going to drop operating income guidance 17:43:52
3 was material nonpublic information at this time, 17:43:56
4 right? 17:43:58

5 A. Yeah, certainly. This is the eve before 17:43:59
6 our earnings call after the close of the market and 17:44:03
7 looking at seeking counsel on how we could 17:44:06
8 articulate this message to our shareholders and the 17:44:11
9 broader media community. 17:44:13

10 Q. And you understand if somebody had this 17:44:14
11 information, a short sale, for example, they could 17:44:16
12 utilize that information, right? 17:44:18

13 MR. REISNER: Objection to form. 17:44:21

14 MR. WAREHAM: Objection to form, 17:44:21
15 foundation, mischaracterizes the testimony. 17:44:22

16 A. Yeah. If someone traded on that 17:44:24
17 information, sure. 17:44:26

18 Q. Let's look at another part of this e-mail 17:44:36
19 you sent to Ms. Ruhle. The second full paragraph 17:44:38
20 you see there's a star and it says "All those are 17:44:41
21 just"? 17:44:43

22 A. Yes. 17:44:47

1 going to speak over each other. We just have to 17:48:37
2 make the record. So I apologize. We're not 17:48:37
3 prescient. I can't tell when he's going to speak, 17:48:37
4 and he can't tell when I'm going to speak. So 17:48:37
5 we'll slow it down. You'll get it right. 17:48:37
6 THE REPORTER: I'd appreciate it. It's 17:48:37
7 been a long day. 17:48:37
8 THE WITNESS: Jamie, you give the 17:48:39
9 objection this time. 17:48:40
10 MR. WAREHAM: Form, foundation objections. 17:48:42
11 BY THE WITNESS: 17:48:47
12 A. What was the question again? 17:48:47
13 Q. Happy to restate it. 17:48:48
14 You'd agree, sir, that you did share 17:48:50
15 material nonpublic information about Under Armour's 17:48:53
16 business during the quiet period by sending this 17:48:55
17 e-mail to Ms. Ruhle, which is Exhibit 37? 17:48:58
18 MR. WAREHAM: Form, foundation, 17:49:01
19 competence, calls for multiple legal conclusions. 17:49:02
20 Go ahead and answer. 17:49:05
21 A. I sent this to her the night before the 17:49:06
22 earnings call, yes, which is technically in the 17:49:08

1 quiet period but doesn't violate anything within my 17:49:10
2 understanding of trust. 17:49:14

3 Q. And you also agree that this was material 17:49:16
4 nonpublic information, the fact that Under Armour 17:49:19
5 was dropping operating income, correct? 17:49:21

6 MR. REISNER: Objection. 17:49:23

7 MR. WAREHAM: Same objections, form, 17:49:24
8 foundation, competence, calls for a legal 17:49:25
9 conclusion. 17:49:28

10 MR. REISNER: And asked and answered. 17:49:29

11 A. Yeah. I don't know how many times I can 17:49:31
12 tell you. I had an understanding of trust with 17:49:32
13 her. She didn't trade in this, her family doesn't 17:49:36
14 trade in this. She's simply giving me input, the 17:49:39
15 same way I talked to sophist- -- this was a -- yes, 17:49:42
16 this was -- this was during -- during the quiet 17:49:48
17 period technically, yes. 17:49:49

18 Q. And it was material nonpublic information? 17:49:51

19 MR. WAREHAM: Same objections, form, 17:49:53
20 foundation, competence, calls for a legal 17:49:54
21 conclusion. 17:49:57

22 A. That was not to be traded on or moved or 17:49:57

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1 acted on, just simply to give reaction to myself. 17:50:00

2 Q. The answer's yes? 17:50:04

3 MR. WAREHAM: Form, foundation, 17:50:05

4 competence, legal conclusion objections. 17:50:07

5 A. Yeah. Good job. 17:50:09

6 Q. At some point, Mr. Frank, your 17:50:18

7 relationship with Ms. Ruhle was brought to the 17:50:20

8 attention of the Under Armour board of directors, 17:50:23

9 correct? 17:50:25

10 A. My relationship, yes. 17:50:25

11 Q. And do you know who alerted the Under 17:50:27

12 Armour board of directors to your relationship with 17:50:29

13 Ms. Ruhle? 17:50:33

14 A. No. 17:50:33

15 Q. You never heard anything about who that 17:50:36

16 might have been? 17:50:37

17 A. This isn't a topic that I was -- I'm 17:50:40

18 interested in. 17:50:42

19 Q. Someone at Under Armour uncovered certain 17:50:44

20 e-mails between you and Ms. Ruhle, right? 17:50:47

21 A. I'm not aware. 17:50:49

22 Q. Did the board of directors see the e-mails 17:50:53

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1 that we have just looked at where you shared 17:50:56
2 information on Under Armour with Ms. Ruhle during 17:50:59
3 various quiet periods? 17:51:01
4 MR. REISNER: Objection to form, 17:51:02
5 foundation, competence. 17:51:03
6 A. Yeah, they did. 17:51:04
7 Q. And then did they question you about the 17:51:06
8 e-mails that we've just looked at where you shared 17:51:07
9 confidential Under Armour information with 17:51:10
10 Ms. Ruhle during various quiet periods? 17:51:13
11 MR. WAREHAM: Form, foundation, 17:51:15
12 competence, legal conclusion, objections. 17:51:17
13 A. I spoke with our lead director, yes. 17:51:17
14 Q. Who's that? 17:51:19
15 A. It was Buzzy Krongard at the time. 17:51:20
16 Q. And did he ask you questions about those 17:51:23
17 e-mails that you sent Ms. Ruhle? 17:51:25
18 A. Yeah. 17:51:27
19 Q. What did he ask you? 17:51:29
20 A. I explained to him the nature of our 17:51:30
21 relationship and the mutual understanding of 17:51:32
22 respect and confidence that we had. 17:51:36

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1 Q. What else did he ask you? 17:51:41

2 A. I don't recall. 17:51:43

3 Q. Do you recall about when that was? 17:51:46

4 A. I don't recall. Was it '18? '18 or 19? 17:51:52

5 '17, '18, '19. I don't remember. 17:51:59

6 Q. So it was just a one-on-one with the head 17:52:02

7 of the board? 17:52:04

8 A. The conversations I had, yes, in depth was 17:52:05

9 with Buzzy Krongard -- 17:52:08

10 Q. Did the -- 17:52:10

11 A. -- our lead director. 17:52:10

12 Q. I'm sorry. 17:52:11

13 Did the Under Armour board of directors 17:52:13

14 take any further actions about what they uncovered 17:52:14

15 about the e-mails to Ms. Ruhle? 17:52:17

16 A. I think they wrote -- they wrote a note 17:52:19

17 for a file for me I believe is what happened. 17:52:21

18 Q. Did they ask you to stop doing that? 17:52:25

19 A. Yeah. They asked to -- that they wouldn't 17:52:29

20 look fondly on sharing that information. I 17:52:32

21 explained the mutual understanding, and they 17:52:35

22 understood it and just said, yep, as a result of 17:52:38

1 that we're advising you not to do that. I said 17:52:41
2 thanks very much, that's really helpful, but we 17:52:46
3 didn't feel any obligation -- we checked with 17:52:49
4 counsel. We didn't feel any obligation to 17:52:51
5 disclose, to notify anyone, and there was no breach 17:52:53
6 or any evidence of anybody doing anything outside 17:52:56
7 of other than just exchanging information with one 17:52:58
8 another from time to time. 17:53:01

9 Q. So the board instructed you to stop that 17:53:02
10 practice? 17:53:06

11 A. What practice? 17:53:07

12 Q. Sharing company inside information with 17:53:08
13 Stephanie Ruhle. 17:53:10

14 MR. REISNER: Objection to form. 17:53:11

15 A. No. They simply just asked -- there 17:53:12
16 wasn't anything to go to that level of detail, but 17:53:15
17 yeah, they asked please don't e-mail, don't share 17:53:17
18 back. You'll have your advisors, talk to who you 17:53:20
19 need to talk to. That was it. 17:53:25

20 Q. Did they say it's okay to continue sharing 17:53:27
21 nonpublic information about the company with 17:53:29
22 Stephanie Ruhle? 17:53:32

1 A. I don't think that was the view. I think 17:53:33
2 the ask was -- yeah, the sending the e-mail over 17:53:37
3 the script was one that I didn't have a 17:53:41
4 recollection of that either and that's one that was 17:53:46
5 pretty arresting to me, but yeah, because I could 17:53:50
6 see how that would be perceived and it would make 17:53:53
7 people uncomfortable and it would really press 17:53:56
8 the -- you know, the confidence from Ms. Ruhle too. 17:53:58
9 So I don't think that put her in a very fair 17:54:01
10 position and I don't think it was the right thing 17:54:03
11 for our board or myself. And so I acknowledged. I 17:54:05
12 agreed with, you know, Mr. Krongard and said I 17:54:07
13 wouldn't do that again. 17:54:09

14 Q. And did you then after that conversation 17:54:12
15 with Mr. Krongard stop sharing inside company 17:54:15
16 information with Ms. Ruhle? 17:54:20

17 MR. REISNER: Objection to form, assumes 17:54:21
18 facts not in evidence. You may answer. 17:54:23

19 A. I mean, we continued to talk, I continued 17:54:25
20 to use Ms. Ruhle as an advisor -- I mean, as 17:54:27
21 someone that I would share information with. 17:54:30

22 Q. So you disregarded Mr. Krongard's 17:54:33